



**BILLING CODE: 3510-17**

**DEPARTMENT OF COMMERCE**

**[Docket No. 150806686-5686-01]**

**RIN 0605-XC023**

**Privacy Act of 1974; Amended System of Records**

**AGENCY:** U.S. Department of Commerce, Office of the Secretary.

**ACTION:** Notice of Proposed Amendment to Privacy Act System of Records:

COMMERCE/DEPT-5, Freedom of Information and Privacy Request Records.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended, Title 5 United States Code (U.S.C.) 552a (e)(4) and (11); and Office of Management and Budget (OMB) Circular A-130, Appendix I, Federal Agency Responsibilities for Maintaining Records About Individuals, the Department of Commerce proposes to amend the system of records entitled “COMMERCE/DEPT-5, Freedom of Information and Privacy Request Records”, to change the system name to “Freedom of Information Act and Privacy Act Request Records” and to update: the category of individuals covered by the system; the categories of records in the system to include databases and electronic files; the system location; the safeguards, retrievability, and storage to include electronic records; the system manager(s) and addresses; the notification procedure; the records access procedures; and the contesting records procedures. Other updates to incorporate are to the routine uses to include: disclosure to a contractor of the Department having need for the information in the performance of the contract, but not operating a system of records within the meaning of 5 U.S.C. 552a (m); disclosure to appropriate agencies, entities and

persons for breach notifications; and disclosure to the National Archives and Records Administration, Office of Government Information Services. We invite public comment on the amended system announced in this publication.

**DATES:** To be considered, written comments must be submitted on or before [insert date 30 days after publication in the FEDERAL REGISTER]. Unless comments are received, the amended system of records will become effective as proposed on the date of publication of a subsequent notice in the Federal Register.

**ADDRESSES:** You may submit written comments by any of the following methods:

Email: [mtoland@doc.gov](mailto:mtoland@doc.gov). Include “COMMERCE/DEPT-5, Freedom of Information Act and Privacy Act Request Records” in the subtext of the message.

Fax: (202) 482-0827, marked to the attention of Freedom of Information and Privacy Act Officer.

Mail: Freedom of Information and Privacy Act Officer, Office of Privacy and Open Government, U.S. Department of Commerce, 1401 Constitution Ave. NW, Room 52010, Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Freedom of Information and Privacy Act Officer, Office of Privacy and Open Government, U.S. Department of Commerce, 1401 Constitution Ave. NW, Room 52010, Washington, DC 20230, (202) 482-1190.

**SUPPLEMENTARY INFORMATION:** This notice announces the Department of Commerce’s (Department) proposal to amend the system of records under the Privacy Act of 1974, for Freedom of Information Act (FOIA) and Privacy Act request records. The changes are needed because the existing notice for this system of records has not been amended since 1981 and therefore, the notice is not up-to-date, accurate, and current, as required by the Privacy Act,

552a (e)(4). Further, Appendix A to OMB Circular A-130 requires agencies to periodically review systems of records notices for accuracy and completeness, paying special attention to changes in technology, function, and organization that may have made the notices out of date, and review routine use disclosures under 5 U.S.C. 552a (b)(3) to ensure they continue to be necessary and compatible with the purpose for which the information was collected. When any of the aforementioned changes occur, the Privacy Act requires agencies to publish in the Federal Register upon revision of a system of records, a notice that describes the amendments to the system of records.

Not only does this notice address statutory requirements for ensuring the notice is up-to-date, accurate, and current, it provides individuals access to a current statement of what types of information are maintained and for what reason, as well. This notice also clarifies for individuals other aspects of the system of records, such as the use of electronic request tracking systems; where information is maintained and who manages the systems on which the information is stored; and the incorporation of additional routine uses, which describe the disclosures that will be made of the information on a routine basis, to whom the information may be released, and for what purpose the disclosures will be made. Specifically, we propose to modify the system of records to read as follows:

**COMMERCE/DEPT-5**

**SYSTEM NAME:** COMMERCE/DEPT-5, Freedom of Information Act and Privacy Act Request Records.

**SECURITY CLASSIFICATION:** None

**SYSTEM LOCATION:**

- a. For Department of Commerce request records: Office of Privacy and Open Government, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.
- b. For Office of the Secretary request records: Immediate Office of the Secretary, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.
- c. For U.S. Census Bureau request records: Freedom of Information Act and Open Government Branch, Policy Coordination Office, U.S. Census Bureau, Room 8H027, 4600 Silver Hill Road, Washington, DC 20233-3700.
- d. For Bureau of Economic Analysis/Economic and Statistics Administration request records: Office of the Undersecretary for Economic Affairs, Economic and Statistics Administration, Room 4848, 1401 Constitution Avenue, NW, Washington, DC 20230.
- e. For Economic Development Administration request records: Office of the Chief Counsel, Economic Development Administration, Room 7325, 1401 Constitution Avenue, NW, Washington, DC 20230.
- f. For Bureau of Industry and Security request records: Office of Administration, Bureau of Industry and Security, Room 6622, 1401 Constitution Avenue, NW, Washington, DC 20230.
- g. For International Trade Administration request records: Performance Management and Employment Management Programs Division, International Trade Administration, Room 40003, 1401 Constitution Avenue, NW, Washington, DC 20230.
- h. For Minority Business Development Agency request records: Minority Business Development Agency, Room 5093, 1401 Constitution Avenue, NW, Washington, DC 20230.
- i. For National Institute of Standards and Technology request records: Freedom of Information Act Office, National Institute of Standards and Technology, Mailstop 1710, 100 Bureau Drive, Gaithersburg, MD 20899-1710.

- j. For National Technical Information Service request records: Freedom of Information Act Officer, National Technical Information Service, 5301 Shawnee Road, Alexandria, VA 22312.
- k. For National Telecommunications and Information Administration request records: Office of the Chief Counsel, National Telecommunications and Information Administration, Room 4713, 1401 Constitution Avenue, NW, Washington, DC 20230.
- l. For National Oceanic and Atmospheric Administration request records: NOAA OCIO, 1315 East-West Highway, Room 9700, SSMC3, Silver Spring, Maryland 20910.
- m. For Office of Inspector General request records: Freedom of Information Act Officer, Office of Inspector General, Room 7896, 1401 Constitution Avenue, NW, Washington, DC 20230.
- n. For U.S. Patent and Trademark Office request records: Freedom of Information Act Officer, U.S. Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313-1450.

#### **CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

The system encompasses all individuals who submit FOIA and Privacy Act requests to the organizational units shown in the System Location section above; individuals whose requests and/or records have been referred by other agencies to the organizational units shown in the System Location section above; attorneys or other persons representing individuals submitting such requests and appeals; individuals who submitted administrative appeals to the Office of the General Counsel, the Office of Inspector General, or the U.S. Patent and Trademark Office; individuals who are the subjects of such requests and appeals; and individuals who file litigation based on their requests.

#### **CATAGORIES OF RECORDS IN THE SYSTEM:**

The system may include requester information, such as the name, address, organization, phone number, and email address of requesters; request information, such as request description,

request fee category and processing track; request submitted, perfected, and acknowledgement sent dates; incoming requests and supporting information; correspondence developed during processing of requests; initial, interim, and final determination letters; records summarizing pertinent facts about requests and actions taken; copy or description of records released; and descriptions of records denied.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Freedom of Information Act, 5 U.S.C. 552; Privacy Act of 1974 as amended, 5 U.S.C. 552a; 5 U.S.C. 301, and 44 U.S.C. 3101.

**PURPOSES:**

The purpose of this system is to maintain records that are used by staff involved in FOIA and Privacy Act request processing and correspondence, as well as by appeals officials and members of the Office of General Counsel, the Office of Inspector General, or the U.S. Patent and Trademark Office. In addition this system is used to support agency participation in litigation arising from such requests and appeals, and to assist the Department and its components in carrying out any other responsibilities under the FOIA or the access or amendment provisions of the Privacy Act.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING**

**CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. § 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside the Department as a routine use pursuant to 5 U.S.C. § 552a(b)(3) as follows:

1. Used by Department management and legal personnel to ensure that each request receives an appropriate reply and to compile data for the required annual reports on activities under the Acts.
2. In the event that a system of records maintained by the Department to carry out its functions indicates a violation or potential violation of law or contract, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute or contract, or rule, regulation, or order issued pursuant thereto, or the necessity to protect an interest of the Department, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or contract, or rule, regulation or order issued pursuant thereto, or protecting the interest of the Department.
3. A record from this system of records may be disclosed, as a routine use, to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an individual, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.
4. A record from this system of records may be disclosed, as a routine use, to a federal, state, local, or international agency, in response to its written request, in connection with the assignment, hiring or retention of an individual, the issuance of a security clearance, the reporting of an investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

5. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate or administrative tribunal, including disclosures to opposing counsel representing the requester and/or subject of the records in the course of settlement negotiations.
6. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual when the individual has requested assistance from the Member with respect to the subject matter of the record.
7. A record in this system of records may be disclosed, as a routine use, to the Department of Justice in connection with determining whether disclosure thereof is required by the Freedom of Information Act (5 U.S.C. 552).
8. A record in this system of records may be disclosed, as a routine use, to a contractor of the Department having need for the information in the performance of the contract, but not operating a system of records within the meaning of 5 U.S.C. 552a (m).
9. A record in this system may be transferred, as a routine use, to the Office of Personnel Management for personnel research purposes; as a data source for management information; for the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained; or for related man-power studies.
10. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services Administration (GSA), or his designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records



for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

11. A record in this system of records may be disclosed to appropriate agencies, entities and persons when: (1) it is suspected or determined that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or whether systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and to prevent, minimize, or remedy such harm.

12. A record from this system of records may be disclosed, as a routine use, to the National Archives and Records Administration, Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. § 552(b), to review administrative agency policies, procedures and compliance with the Freedom of Information Act (FOIA), and to facilitate OGIS' offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.

13. A record in this system of records may be disclosed, as a routine use, to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

#### **DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

Not applicable.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING,  
RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

At all locations: Records in this system are stored on paper and/or in electronic form. Paper records are maintained in file folders or loose-leaf binders. Electronic records are maintained within electronic request tracking systems and/or in electronic form in system folders; additional electronic files may be kept in electronic digital media within a controlled environment, and accessed only by authorized personnel.

**RETRIEVABILITY:**

For FOIA requests:

- a. Records maintained in electronic request tracking systems are retrieved by individual Department component responsibility; by the name and/or organization of the requester or appellant; the number assigned to the request or appeal; by the name of the individual assigned to process the request or appeal; by the received, due, and/or closed date of the request or appeal; by the track, type and/or status of the request; and/or the time in days to process the request.
- b. Records maintained in electronic form in system folders are retrieved by the name of the requester or appellant and/or the number assigned to the request or appeal.
- c. Records maintained in paper form are retrieved by the name of the requester or appellant; and/or the number assigned to the request or appeal.

For Privacy Act requests:

- a. Records maintained in electronic request tracking systems or electronic form in system folders are retrieved by the name of the requester or appellant and/or the number assigned to the request or appeal.

b. Records maintained in paper form are retrieved by the name of the requester or appellant; and/or the number assigned to the request or appeal.

**SAFEGUARDS:**

Paper records and disks as stored in file cabinets on secured premises with access limited to personnel whose official duties require access. For electronic media, the system is password protected and is FIPS 199 (Federal Information Processing Standard Publication 199, “Standards for Security Categorization of Federal Information and Information Systems”) compliant. The electronic system adheres to a Moderate security rating.

**RETENTION AND DISPOSAL:**

Records are disposed of in accord with the appropriate records disposition schedule approved by the Archivist of the United States.

**SYSTEM MANGER(S) AND ADDRESS:**

For records at location a.: Departmental Freedom of Information/Privacy Act Officer, Office of Privacy and Open Government, U.S. Department of Commerce, Room A300, 1401 Constitution Avenue, NW, Washington, DC 20230.

For records at location b.: Office of the Secretary Freedom of Information Act Officer, Office of Privacy and Open Government, U.S. Department of Commerce, Room A300, 1401 Constitution Avenue, NW, Washington, DC 20230.

For records at location c.: Freedom of Information Act/Privacy Act Officer, Freedom of Information Act and Open Government Branch, Policy Coordination Office, U.S. Census Bureau, Room 8H027, 4600 Silver Hill Road, Washington, DC 20233-3700.

For records at location d.: Freedom of Information Act Officer, Office of the Undersecretary for Economic Affairs, Economic and Statistics Administration, Room 4848, 1401 Constitution Avenue, NW, Washington, DC 20230.

For records at location e.: Freedom of Information Act Officer, Office of the Chief Counsel, Economic Development Administration, Room 7325, 1401 Constitution Avenue, NW, Washington, DC 20230.

For records at location f.: Freedom of Information Act Officer, Office of Administration, Bureau of Industry and Security, Room 6622, 1401 Constitution Avenue, NW, Washington, DC 20230.

For records at location g.: Freedom of Information Act Officer, Performance Management and Employment Management Programs Division, International Trade Administration, Room 40003, 1401 Constitution Avenue, NW, Washington, DC 20230.

For records at location h.: Freedom of Information Act Officer, Minority Business Development Agency, Room 5093, 1401 Constitution Avenue, NW, Washington, DC 20230.

For records at location i.: Freedom of Information Act Officer, Freedom of Information Act Office, National Institute of Standards and Technology, Mailstop 1710, 100 Bureau Drive, Gaithersburg, MD 20899-1710.

For records at location j.: Freedom of Information Act Officer, National Technical Information Service, 5301 Shawnee Road, Alexandria, VA 22312.

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For records at location l.: Freedom of Information Act Officer, NOAA OCIO, 1315 East-West Highway, Room 9700, SSMC3, Silver Spring, Maryland 20910.

For records at location m.: Freedom of Information Act Officer, Office of Inspector General, Room 7896, 1401 Constitution Avenue, NW, Washington, DC 20230.

For records at location n.: Freedom of Information Act Officer, U.S. Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313-1450.

#### **NOTIFICATION PROCEDURE:**

Individuals who are seeking notification of and access to any record contained in this system of records, or who are seeking to contest its content or appeal an initial determination, should submit a signed, written inquiry to the Department of Commerce's or component's FOIA Officer and/or Privacy Act Officer, whose contact information can be found at <http://www.osec.doc.gov/omo/FOIA/contactfoia.htm> under "Freedom of Information Act/ Privacy Act Contacts" or under the System Manager(s) section above. Records concerning initial requests under the FOIA and the Privacy Act are maintained by the individual Department of Commerce component to which the initial request was addressed or directed. Individuals who believe more than one component maintains records in this system of records concerning them may submit a request to the Departmental Freedom of Information/Privacy Act Officer, Office of Privacy and Open Government, U.S. Department of Commerce, Constitution Avenue, NW, Washington, DC 20230.

Any individuals who seek records from this system of records or any other Department system of records pertaining to themselves, must submit a request conforming with the Department's Privacy Act regulations set forth in 15 CFR Part 4. Individuals must first verify their identities, meaning that they must provide their full name, current address and date and place of birth. Individuals must sign the request, and their signatures must either be notarized or submitted

under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization.

Any individuals who seek records from this system of records or any other Department system of records on behalf of another living person, must include a statement, which conforms with 15 CFR Part 4, from that person certifying his/her agreement to allow access to the records. Requesters should reasonably specify the record contents being sought.

**RECORD ACCESS PROCEDURES:**

Same as Notification Procedure section above.

**CONTESTING RECORD PROCEDURES:**

Same as Notification Procedure section above. Requesters should also reasonably identify the records, specify the information they are contesting, and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate, or irrelevant.

**RECORD SOURCE CATEGORIES:**

Records are obtained from those individuals who submit requests and administrative appeals pursuant to the FOIA and the Privacy Act or who file litigation regarding such requests and appeals; the agency record keeping systems searched in the process of responding to such requests and appeals; Department personnel assigned to handle such requests, appeals, and/or litigation; other agencies or entities that have referred to Department requests concerning Department records or that have consulted with the Department regarding handling of particular requests; and submitters or subjects of records or information that have provided assistance to the Department in making access or amendment determinations.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:** None.

Dated: October 1, 2015.

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Michael J. Toland,  
Department of Commerce,  
Acting Freedom of Information/Privacy Act

Officer.

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